YONG JOO CHUAN v. TAN TECK CHIANG

[F.C. (Lee Hun Hoe C.J. (Borneo), Ong Hock Sim F.J. and George Seah J.) October 5 and November 12, 1977]

[Kuching — Federal Court Civil Appeal No. 30 of 1977]

Landlord and Tenant — Application to amend statement of claim — Premises required for occupation by owner — Whether tenancy determined by one year's notice to quit — Sarawak Rent Control Ordinance (Cap. 86), s. 15(1)(f).

The respondent had brought an action to recover possession of premises let to the appellant. The respondent applied to amend the statement of claim by adding particulars to show that the premises were required for occupation by himself. The application was allowed in the High Court and the appellants appealed.

Held, dismissing the appeal: the application should be allowed so that the action could proceed to trial. It would be futile to object to the amendment as the respondent could file a fresh action incorporating the proposed amendments.

FEDERAL COURT.

Patrick Tan for the appellants.

Matthew Chan for the respondents.

Ong Hock Sim F.J. (delivering the judgment of the Court read by Lee Hun Hoe C.J. (Borneo)); This is an appeal from the decision of Mr. Justice Mohd. Yusoff allowing respondent's application to amend his Statement of Claim by adding to paragraph 7 certain particulars as follows:—

"*PARTICULARS*

(i) That the plaintiff reasonably requires the ground-floor of the premises for occupation by himself;

(ii) That the plaintiff has been the owner of the premises since 1964; and

(iii) That, on or about June 22, 1971, the plaintiff gave the defendants not less than one year's written notice to quit from the ground-floor of the premises, a copy whereof is annexed hereto and marked 'B'."

It cannot be disputed that the action was filed in November 1972 and application to amend was made only on January 10, 1977 and allowed on January 11, 1977. In our view, objection to the amendment is futile in the sense that the respondent could withdraw his action and file a fresh one incorporating the proposed amendments. There was a discussion between counsel on January 3, 1977.

It would be prejudging the issue raised by the appellant in sub-paragraph (f) of paragraph 1 of his Memorandum of Appeal. For my part, I would say that I would not attempt to influence the trial judge when the action comes on for trial. The sole question is whether Exhibit 'B' a letter dated June 22, 1971 complies with section 15(1)(f) of the Rent Control Ordinance (Cap 86) which enacts:—

"(f) where the owner of the premises reasonably requires the same for occupation by himself or any member of his family or any person for whom he holds the premises in trust, and —

(i) there has been no change by purchase in the ownership of the premises since April 15, 1946; or

(ii) the tenancy has been determined by not less than one year's notice to quit and there has been no change by purchase in the ownership of the premises within one year next preceding the date of such notice."

That letter sought the kind co-operation of the appellants at the expiration of the term of the sublease. It would be for the court to determine whether by that letter "*the tenancy has been determined* by not less than one year's notice to quit." It may show an intention to take back possession after September 1972. Whether it is competent to so determine during the currency of a term may be in doubt. As a notice to determine, it should be clear, unequivocal and certain.

In the event we dismiss the appeal so that the action can proceed to trial. We would allow appellants' application to amend paragraph 3 of their Statement of Defence. Costs will be in the cause.

Appeal dismissed.

Solicitors: *Yong & Co.; Chan, Jugah, Wan Ullok & Co.*

LEE AH THAW & ANOR. v. LEE CHUN TEK

[F.C. (Lee Hun Hoe C.J. (Borneo), Ong Hock Sim and Seah J.) October 5 and November 12, 1977]

[Kuching — Federal Court Civil Appeal No. 16 of 1977]

Land Law — Caveat — Whether residuary beneficiaries of estate under will had power to lodge caveat — Whether entitled to or beneficially interested in land — Trust for conversion — Trustees Ordinance, 1949, s. 18 — Sarawak Land Code (Cap. 81), s. 173.

The appellants who claimed to be beneficiaries under the will of their deceased father had brought an administration suit against the executor and they had caveated the lands belonging to the estate. The respondent applied to have the caveat removed and the learned judge of the High Court made an order accordingly. The appellants appealed to the Federal Court.

Held, dismissing the appeal: the appellants as residuary beneficiaries, did not have a caveatable interest in the lands since the administration of the estate was incomplete and the residue was unascertained.

Cases referred to:-

(1) *Crombie* v. *Cooper* (1876) 24 Cr. 470; English and Empire Digest Vol. 48, p. 636.

(2) *Plumb* v. *McGannon* (1871) 32 U.C.R. 8; English and Empire Digest Vol. 48, p. 634.

(3) *Mahadevan & Anor.* v. *Patel* [1975] 2 M.L.J. 207, 208.

(4) *Lord Sudeley & Ors.* v. *The Attorney-General* [1897] A.C. 11.

(5) *Dr. Barnardo's Homes National Incorporated Association* v. *Commissioners for Special Purposes of the Income Tax Acts,* [1921] 2 A.C. 1.

(6) *Commissioner of Stamp Duties* v. *Livingston* [1964] 3 All E.R. 692.

(7) *Liew Siew Yin & Anor.* v. *Lee Pak Yin & Anor.* [1940] M.L.J. 108.

(8) *Guardian Trust and Executors Company of New Zealand Ltd.* v. *Hall* (1938) 57 N.Z.L.R. 1020.

(9) *Re Savage's Caveat* (1956) 75 N.Z.L.R. 118.

(10) *Re Parson* [1943] Ch. 12.

(11) *Commissioners of Inland Revenue* v. *Smith* [1930] 1 K.B. 713.

(12) *Corbett* v. *Commissioners of Inland Revenue* [1938] 1 K.B. 567.

FEDERAL COURT.

Patrick Tan for the appellants.

Ee Poh Teck for the respondents.

Lee Hun Hoe C.J. (Borneo): This appeal is against the decision of the learned judge in directing the